

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF            }  
J. HOFERT COMPANY,         }  
                              }  
                  Appellant,   }  
                              }  
                  v.            }  
                              }  
OLYMPIC AIR POLLUTION     }  
CONTROL AUTHORITY,        }  
                              }  
                  Respondent.   }

PCHB No. 541

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

THIS MATTER being the appeal of a \$50.00 civil penalty for allegedly burning plastic material in an open fire in violation of respondent's Regulation I; having come on regularly for hearing before the Pollution Control Hearings Board on the 15th day of August, 1974, at Lacey, Washington; and appellant, J. Hofert Company, appearing through its manager of nursery and plantation, Ron Hanning and respondent, Olympic Air Pollution Control Authority, appearing through its attorney, Fred D. Gentry; and Board members present at the hearing being Walt Woodward (presiding) and Chris Smith; and the Board having considered the sworn

1 testimony, exhibits, records and files herein and having entered on  
2 the 26th day of August, 1974, its proposed Findings of Fact,  
3 Conclusions of Law and Order, and the Board having served said  
4 proposed Findings, Conclusions and Order upon all parties herein by  
5 certified mail, return receipt requested and twenty days having elapsed  
6 from said service; and

7 The Board having received no exceptions to said proposed Findings,  
8 Conclusions and Order; and the Board being fully advised in the  
9 premises; now therefore,

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
11 Findings of Fact, Conclusions of Law and Order, dated the 26th day of  
12 August, 1974, and incorporated by this reference herein and attached  
13 hereto as Exhibit A, are adopted and hereby entered as the Board's  
14 Final Findings of Fact, Conclusions of Law and Order herein.

15 DONE at Lacey, Washington, this 20<sup>th</sup> day of September, 1974.

16 POLLUTION CONTROL HEARINGS BOARD

17  
18 Walt Woodward  
19 WALT WOODWARD, Chairman

20  
21 Chris Smith  
22 CHRIS SMITH, Member

23  
24  
25  
26 Final Findings of Fact,  
27 Conclusions of Law  
and Order

CERTIFICATION OF MAILING

I, LaRene Barlin, certify that I deposited in the United States mail, copies of the foregoing document on the 23<sup>rd</sup> day of September, 1974, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. Ron Hanning  
Nursery Superintendent  
J. Hofert Company  
P. O. Box 88  
Olympia, Washington 98501

Mr. Fred D. Gentry  
Bean, Gentry and Rathbone  
614 Capitol Center Building  
Olympia, Washington 98501

Olympic Air Pollution Control Authority  
120 East State Street  
Olympia, Washington 98501

L. R. Barlin  
LARENE BARLIN

POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

PCHB No. 541

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a \$50.00 civil penalty for allegedly burning plaster material in an open fire in violation of Respondent's Regulation I, came before the Pollution Control Hearings Board, (Walt Woodward, presiding officer, and Chris Smith) at a formal hearing in Lacey, Washington at 10:00 a.m., August 15, 1974.

Appellant was represented by its manager of nursery and plantation, Ron Hanning; Respondent appeared through its attorney, Fred D. Gentry. Sherri Darkow, Olympia court reporter, recorded the testimony.

Witnesses were sworn, testimony was heard, and exhibits were

**EXHIBIT A**

1 admitted. Being fully advised, the Board makes these

2 FINDINGS OF FACT

3 I.

4 Appellant is the J. Hofert Company, a wholesaler and shipper of  
5 Christmas trees. Its office is located at 9000 Capitol Boulevard in  
6 Olympia. At all relevant times in this matter Appellant controlled the  
7 areas in Thurston County where open burning was conducted.

8 II.

9 Appellant has had one prior notice of violation concerning unlawful  
10 burning issued in January, 1972. No penalty was assessed for this  
11 violation.

12 III.

13 On January 4, 1974 at approximately 12:45 p.m., while near the  
14 area of the J. Hofert Company in Thurston County, Virgil Vestal,  
15 inspector for the Olympic Air Pollution Control Authority, saw smoke  
16 originating from Appellant's location and crossing Highway 99. He  
17 called his office and found that an open burning permit had been issued  
18 to Appellant. (Respondent's exhibit 4) He investigated and saw plastic  
19 mesh being burned in two fires. The plastic mesh, also known as  
20 "Vexar netting," was used to bale pine trees. One fire was burning  
21 trees all of which were baled with this mesh. The second fire contained  
22 some plastic meshing. Mr. Vestal spoke with Mr. Hanning, and suggested  
23 the removal of the plastic meshing from the trees. Mr. Vestal there-  
24 after issued Notice of Violation No. 562 (Respondent's exhibit 2) to  
25 Appellant for violating Section 9.01 of Respondent's Regulation I  
26 (Respondent's exhibit 1), more specifically, for burning a prohibited

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 substance, plastic.

2 IV.

3 From the Notice of Violation No. 562 was assessed a Notice of Civil  
4 Penalty (Respondent's exhibit 3) for an amount of \$50.00 pursuant to  
5 Section 3.27 of Respondent's Regulation I, which is the subject matter  
6 of the present appeal.

7 V.

8 The penalty of \$50.00 was assessed by Mr. John Rosene, control  
9 officer for Respondent. He made the assessment after considering the  
10 previous record of Appellant, the guidelines of the Washington Control  
11 Officer's Association, and effect of the smoke over the highway.

12 VI.

13 Appellant, as part of its program to preserve the environment,  
14 sought to comply with all applicable rules and regulations. Fires were  
15 started only when weather conditions were unstable. To avoid foreign  
16 substances in the fires, a butane lighter was used as a starter.

17 Twine was used to bale all trees except pine trees. The pine  
18 trees were baled with plastic netting because other methods of baling  
19 were not satisfactory.

20 The Appellant's employees were instructed by Mr. Hanning three  
21 days before the fire, and by Mr. Hanning and his predecessor at prior  
22 times, that no plastic should be burned in any open fire. Notwithstanding  
23 these instructions, Appellant's employees proceeded to burn plastic  
24 in the fires on January 4, 1974.

25 VII.

26 Section 9.01 of Respondent's Regulation I provides in part:

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 . . . .

2 (b) Open burning other than the above exceptions may be  
3 conducted only by permit from the Control Officer or his duly  
4 designated agent. Such permits shall be issued when the  
5 Control Officer, or his duly designated agent, is satisfied  
6 that:

7 . . . .

8 (5) No material containing asphalt, petroleum products,  
9 paints, rubber products, plastic or any substance which  
10 normally emits dense smoke or obnoxious odors will be  
11 burned.

12 (c) Any permit issued may be limited by the imposition of  
13 conditions to prevent air pollution as defined in Article 1 of  
14 this Regulation. If it becomes apparent at any time to the  
15 Control Officer that limitations need to be imposed, the Control  
16 Officer, or his duly designated agent, shall notify the  
17 permittee; and any limitations so imposed shall be treated as  
18 conditions under which the permit is issued.

19 . . . .

20 (e) It shall be prima facie evidence that the person who  
21 owns or controls property on which an open fire, prohibited by  
22 this Regulation, occurs has caused or allowed said open fire.

## 23 VIII.

24 Section 3.27 of Respondent's Regulation I provides in part:

25 (a) . . . [A]ny person who violates any of the provisions  
26 of the rules, regulations, resolutions or ordinances of the  
27 Authority shall incur a penalty in the form of a fine in an  
28 amount not to exceed two hundred fifty dollars per day for each  
29 violation. . . .

30 Subsection (b) provides for the collection of such penalties.

## 31 IX.

32 Any Conclusion of Law hereinafter deemed to be a Finding of Fact  
33 is herewith adopted as same.

34 From these Findings, the Pollution Control Hearings Board comes  
35 to these

36 FINDINGS OF FACT,  
37 CONCLUSIONS OF LAW AND ORDER

1 CONCLUSIONS OF LAW

2 I.

3 Appellant violated Section 9.01 of Respondent's Regulation I on  
4 January 4, 1974 by burning a prohibited substance in an open fire.

5 II.

6 Appellant has shown no legal defense for the violation occurring  
7 on January 4, 1974. Appellant is responsible for the acts of its  
8 employees and cannot avoid liability simply because its instructions  
9 were violated.

10 III.

11 The penalty assessed is reasonable in amount in view of the  
12 circumstances found to exist at the time of the violation. We make this  
13 determination independently of the Respondent's method of assessment.

14 IV.

15 Any Finding of Fact which should be deemed a Conclusion of Law is  
16 hereby adopted as such.

17 Therefore the Pollution Control Hearings Board issues this  
18  
19  
20  
21  
22  
23  
24  
25  
26



ORDER

The appeal from the assessment of a \$50.00 civil penalty based upon Notice of Violation No. 562 is denied.

DATED this 26<sup>th</sup> day of August, 1974.

POLLUTION CONTROL HEARINGS BOARD

Walt Woodward  
WALT WOODWARD, Chairman

Chris Smith  
CHRIS SMITH, Member

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER